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RECEIVED ON:

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EPA Region 10
Office of the Regional Administrator

November 27, 2015

Via Certified Mail - Return Receipt Requested

Managing Agent
A & K Development Company
410 Chambers Street
Eugene, Oregon 97402

Re: Notice of Intent to File Suit under the Clean Water Act.

Dear Managing Agent:

This letter provides A & K Development Company (hereinafter "A & K Development") with sixty days' notice of the Northwest Environmental Defense Center's intent to file a citizen lawsuit against it under Section 505 of the Clean Water Act, 33 U.S.C. §1365, for the Clean Water Act violations described in this letter. The Northwest Environmental Defense Center (hereinafter "NEDC") is a non-profit organization dedicated to protecting the natural environment of the Pacific Northwest. Kampmeier & Knutsen, PLLC represents NEDC in this matter and any response to this notice of intent to sue should be directed to us at the address below.

I. VIOLATIONS OF THE CLEAN WATER ACT.

Congress enacted the Clean Water Act in 1948 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985. To limit and control water pollution in Eugene, Oregon, the Oregon Department of Environmental Quality and the City of Eugene, Oregon authorized A & K Development to discharge stormwater associated with industrial activity from July 1, 2012 to June 30, 2017 by granting A & K Development coverage under Oregon's General National Pollutant Discharge Elimination System Stormwater Discharge Permit No. 1200-Z (File Number 108756) (hereinafter "NPDES permit").

A & K Development's NPDES permit authorizes A & K Development to discharge stormwater associated with industrial activity, provided the discharges are "in conformance with all the requirements, limitations, and conditions set forth" in the permit. Any other direct or indirect discharge

to waters of the state is prohibited, including those discharges that are not in compliance with the terms and conditions of the NPDES permit. See Schedule A.13.a and Schedule F.A.1 of the NPDES permit (Duty to Comply) (“Any permit noncompliance constitutes a violation of ... the Clean Water Act ... and is grounds for enforcement action....”).

A & K Development has violated and is violating Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants and stormwater associated with industrial activity from the A & K Development facility at or near 410 Chambers Street, Eugene, Oregon 97402 (hereinafter the “facility”), to Amazon Creek (also known as the Amazon Diversion Canal (A3 Drain)), the Long Tom River, the Willamette River, and/or other waters of the state, in violation of the terms and conditions of A & K Development’s NPDES permit. This letter provides sixty days’ notice of NEDC’s intent to sue over violations at the facility, as well as violations at any properties that are owned or operated by A & K Development and contiguous or adjacent to the facility.

A. VIOLATIONS OF THE NARRATIVE, TECHNOLOGY-BASED EFFLUENT LIMITS AND THE CONTROL MEASURES REQUIRED TO MEET THOSE LIMITS.

Schedule A.1 of A & K Development’s NPDES permit requires A & K Development to meet the narrative technology-based effluent limits listed in that condition of the NPDES permit. Those effluent limits require A & K Development, among other things, to “minimize exposure of manufacturing, processing, [and] material storage areas ... to rain, snow, snowmelt and runoff” (Schedule A.1.a); to employ measures to eliminate or minimize oil and grease contamination of stormwater discharges (Schedule A.1.b); to “recycle or properly dispose of wastes to eliminate or minimize exposure of pollutants to stormwater” (Schedule A.1.c); to “stabilize exposed areas and contain runoff using structural and nonstructural controls to minimize erosion of soil at the site and sedimentation” (Schedule A.1.d); to “employ screens, booms, settling ponds, or other methods to eliminate or minimize waste, garbage and floatable debris in stormwater discharges and ensure that this debris is not discharged to receiving waters” (Schedule A.1.e); “to minimize generation of dust and off-site tracking of raw, final or waste materials” (Schedule A.1.f); to “routinely clean all exposed areas that may contribute pollutants to stormwater using such measures as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers” (Schedule A.1.g); to minimize the potential for spills and develop spill prevention and response plans (Schedule A.1.h); to regularly inspect, clean, maintain and repair all equipment, systems, areas, and stormwater control measures (Schedule A.1.i); and to develop and maintain an employee education program on the components and goals of the Stormwater Pollution Control Plan (“SWPCP”) (Schedule A.1.j).

Additionally, Schedule A.3.a of A & K Development’s NPDES permit requires A & K Development “to select, design, install, implement and maintain control measures to meet the narrative and numeric technology based effluent limits in Schedule A.1, A.2 and Schedule E of the permit and [to] describe[] these measures in the SWPCP.” Schedule A.6.c of the NPDES permit then requires A & K Development to implement the SWPCP. Perhaps most importantly, Schedule A.3.b of the NPDES permit requires A & K Development to “...**reduce or eliminate pollutants to the extent achievable** using control measures that are technologically available and economically practicable and achievable in light of best industry practice.”

A & K Development has violated and is violating these NPDES permit conditions by failing to meet the narrative technology based effluent limits in Schedule A.1 of the NPDES permit; by failing to select, design, install, implement, and maintain control measures that meet the narrative technology-based effluent limits in Schedule A.1 of the NPDES permit; by failing to describe such measures in its SWPCP; and by failing to fully implement its SWPCP. These violations are demonstrated in part by the fact that A & K Development is greatly exceeding the pollutant benchmarks for total copper, total zinc, and total arsenic imposed by Schedule A.9 of the permit. These violations have occurred each and every day since A & K Development obtained coverage under the NPDES Permit on January 17, 2013.

Schedule A.9 of the NPDES permit explains that the benchmarks “are designed to assist the permit registrant in determining whether its site controls are effectively reducing pollutant concentrations in stormwater discharged from the site.” Schedule A.9 establishes the following statewide benchmark applicable to A & K Development: total copper 0.020 mg/L; total lead 0.040 mg/L; total zinc 0.12 mg/L; pH 5.5 – 9.0 S.U.; total suspended solids 100 mg/L; and total oil and grease 10 mg/L. Additionally, A & K Development discharges to a water body that is not meeting water quality standards for various pollutants, including arsenic, and the NPDES permit therefore requires A & K Development to monitor for this parameter and establishes a reference concentration for arsenic of 0.0021 mg/L. A & K Development has repeatedly failed to meet these benchmarks, as indicated in the tables below.

Discharge Monitoring Results Reported by A & K Development for Outfall 1							
	pH	TSS	O & G	Copper	Lead	Zinc	Arsenic
Bench- marks	5.5 - 9.0 S.U.	100 mg/L	10 mg/L	0.020 mg/L	0.040 mg/L	0.12 mg/L	0.0021 mg/L
	W	W	W	W	W	W	
	W	W	W	W	W	W	
3/20/13	6.4	40	ND	0.029	0.006	0.210	
5/22/13	6.4	23	ND	0.016	ND	0.08	
Geo-Mean				0.022		0.130	
11/5/13	7.6	40	ND	0.034	0.007	0.18	ND
12/13/13	7.9	332	ND	0.11	0.059	0.92	
2/17/14	7.2	50	ND	0.037	0.009	0.21	0.002
4/24/14	7.0	53	ND	0.079	0.012	0.17	
Geo-Mean		77.021		0.0575	0.0145	0.277	
10/24/14	7.89	16	ND	0.0111	0.0026	0.0636	ND
11/21/14	7.18	114	4.74	0.0526	0.0139	0.291	
2/3/15	W	W	W	0.028	W	0.12	W
2/27/15	W	W	W	0.047	W	0.19	
Geo-Mean				0.030		0.14	

Discharge Monitoring Results Reported by A & K Development for Outfall 2							
	pH	TSS	O & G	Copper	Lead	Zinc	Arsenic
Bench- marks	5.5 - 9.0 S.U.	100 mg/L	10 mg/L	0.020 mg/L	0.040 mg/L	0.12 mg/L	0.0021 mg/L
	W	W	W	W	W	W	
	W	W	W	W	W	W	
3/20/13	5.9	51	ND	0.029	0.009	0.400	
5/22/13	6.6	76	ND	0.019	0.005	0.300	
Geo-Mean				0.023	0.007	0.346	
11/5/13	7.2	61	ND	0.11	0.036	0.92	0.002
12/13/13	7.7	122	ND	0.077	0.018	0.62	
2/17/14	W	W	W	0.22	W	1.3	0.003
4/24/14	W	W	W	0.041	W	0.32	
Geo-Mean				0.0935		0.6979	
10/24/14	W	W	W	0.267	W	1.51	0.00924
11/21/14	W	W	W	0.136	W	1.13	
2/3/15	W	W	W	0.068	W	0.34	0.0011
2/27/15	W	W	W	0.047	W	0.43	
Geo-Mean				0.104		0.71	

TSS – total suspended solids

O & G – oil and grease

ND – No Detect, result below analysis detection level

W – Waiver, monitoring requires for the parameters are waived

Bold – result is over the permit benchmark/reference concentration

The benchmark and reference concentration exceedances by A & K Development are ongoing and demonstrate that A & K Development's site controls are not effectively minimizing or reducing pollutants in stormwater discharged from the facility, as required. A & K Development can and must do more to reduce those pollutant loads, including revising its SWPCP and then implementing those revisions in a timely manner.

A & K Developments' failure to minimize pollutant loadings in its stormwater discharges also demonstrates that A & K Development has violated and is violating Schedule A.3.d of the NPDES permit. Schedule A.3.d.i of A & K Development's NPDES permit states: "If the permit registrant is failing to implement the control measures in the SWPCP, they must take corrective actions and implement the measures before the next storm event if practicable, unless otherwise approved by [the Oregon Department of Environmental Quality] or Agent." Additionally, Schedule A.3.d.ii of A & K Development's NPDES permit states:

If modifications to the control measures are necessary to meet the technology limits in the permit, permit registrant must revise SWPCP within 30 days, unless otherwise approved by DEQ or Agent. Permit registrant must implement the corrective actions before the next storm event if practicable or no later than 60 days from discovering the violation, unless a later date is approved by DEQ or Agent.

A & K Development has violated and is violating these requirements by failing to fully implement its SWPCP and by failing to take corrective actions even though modifications to the control measures are necessary to meet the effluent limits in the permit. These violations have occurred each and every day since A & K Development obtained coverage under the NPDES Permit on January 17, 2013.

B. VIOLATIONS OF WATER QUALITY BASED EFFLUENT LIMITATIONS.

Schedule A.4.a of A & K Development's NPDES permit prohibits A & K Development from causing or contributing to a violation of instream water quality standards as established in Oregon Administrative Rules 340-041. A & K Development discharges to a water body identified as failing to meet the water quality standard for arsenic. As indicated in the tables above, discharges from A & K Development's facility contain elevated levels of arsenic. A & K Development has violated and is violating Schedule A.4.a of the NPDES permit by discharging stormwater that causes or contributes to violations of the water quality standard for arsenic in the receiving water. These violations have occurred each and every day since A & K Development obtained coverage under the NPDES permit on January 17, 2013 on which there was 0.1 inch or more of precipitation, including on the following days when A & K Development collected a sample of its discharge that exceeded the reference concentration for arsenic: February 17, 2014; and October 24, 2014.

C. SWPCP VIOLATIONS.

Schedule A.3.a, A.6.a and A.6.c of the NPDES permit require A & K Development to prepare and implement a SWPCP consistent with the requirements of the NPDES permit. Schedule A.7 of the NPDES permit describes the required elements for the SWPCP, which include a description of control measures installed and implemented to meet the technology and water quality based requirements in Schedule A.1 – A.5 and Schedule E; a description of how the stormwater control measures address potential pollutant sources from industrial activities and significant materials at the facility (Schedule A.7.b.v); and preventative maintenance procedures for conducting inspections, maintenance, and repairs (Schedule A.7.c.ii.). A & K Development has violated and is violating these requirements by failing to prepare and/or implement a SWPCP that meets these requirements. These violations have occurred each and every day since A & K Development obtained coverage under the NPDES permit on January 17, 2013.

D. CORRECTIVE ACTION VIOLATIONS.

I. *Tier I Violations.*

Schedule A.10 of A & K Development's NPDES permit obligates A & K Development to conduct a Tier 1 Corrective Action Response anytime its stormwater sampling results exceed an applicable statewide benchmark identified in Schedule A.9, an applicable sector specific benchmark identified in Schedule E, or an applicable impairment pollutant reference concentration identified in A & K Development's permit assignment letter. A Tier 1 Corrective Action requires A & K Development, within 30 days of receiving the monitoring results, to investigate the cause of the elevated pollutant levels, review its SWPCP and the selection, design, installation, and implementation of control measures to ensure compliance with the NPDES permit, make any necessary revisions to the SWPCP, and submit

the revisions to the City of Eugene. The NPDES permit further requires that A & K Development prepare and retain a Tier I report that summarizes the results of the investigation, the corrective actions taken or to be taken, the corrective action schedule, the basis for any determination that corrective action is not necessary, and whether SWPCP revisions are necessary. The Tier I Corrective Action must be implemented before the next storm even if possible or as soon as practicable.

A & K Development has violated and is violating the requirements of Schedule A.10 of the NPDES permit by failing to timely complete and implement a Tier I Corrective Action Response that fulfills all of the requirements described above each and every time A & K Development's sampling results exceeded a benchmark or reference concentration since January 17, 2013. These violations include those for A & K Development's failure to timely complete and implement Tier I Corrective Action Responses for each benchmark exceedance for total copper, total zinc, total lead, and total suspended solids, and for each reference concentration exceedance for arsenic identified in the tables above, and by failing to timely complete and implement Tier I Corrective Action Responses for benchmark and/or reference concentration exceedances that have occurred since June 30, 2015.

2. Tier II Violations.

Schedule A.12 of the NPDES permit requires A & K Development to complete and implement a Tier II Corrective Action Response if the geometric mean of sample results collected during the 2nd year of coverage under the NPDES permit exceeds any statewide benchmark in Schedule A.9. This Tier II Corrective Action requires permittees to revise the SWPCP to include additional treatment measures with the goal of achieving benchmarks in future discharges and to describe the rationale for the selection of the measures, the projected reduction of pollutant concentrations, and the schedule for implementing the additional measures. A licensed professional engineer or a certified engineering geologist must design and stamp the portion of the SWPCP that addresses the treatment measures. The revised SWPCP must be submitted to the City of Eugene by December 31st of the 3rd year of coverage under the NPDES permit—i.e., by December 31, 2014—and be fully implemented by June 30 of the 4th year of coverage under the NPDES permit. As described in A & K Development's NPDES permit coverage letter, monitoring data collected during the July 1, 2013 to June 30, 2014 monitoring year are to be used as the 2nd year data for triggering the Tier II Corrective Action requirements of Schedule A.12.

As indicated in the tables above and in the discharge monitoring reports A & K Development submitted to the City of Eugene, A & K Development triggered these Tier II Corrective Action requirements for total copper and total zinc at both Outfall #1 and Outfall #2 at the facility. A & K Development is in violation of the requirements of Schedule A.12 of the NPDES permit because it has failed to timely complete and implement all of the Tier II Corrective Action Response requirements described above for total copper and total zinc. These violations include the fact that A & K Development failed to submit a revised SWPCP that addressed exceedances of the benchmark for total zinc at Outfall #1, as required. Further, although A & K Development's revised SWPCP predicts that the additional treatment measures to be implemented at Outfall #1 (catch basin filter inserts) will achieve a 50% reduction in metals, based on the geometric mean of the second year sampling results those reductions would be insufficient to bring total copper and total zinc within benchmarks for those pollutants even if accomplished. The failure to submit a revised SWPCP that addresses discharges of total zinc from Outfall #1, and the failure to submit a revised SWPCP that includes additional stormwater treatment measures designed to meet the goal of achieving the pollutant benchmarks in

Schedule A.9 of the permit for total copper and total zinc in future discharges, violates A & K Development's NPDES permit. These violations have occurred each and every day since December 31, 2014 and are ongoing.

E. VIOLATIONS OF INSPECTION & RECORD-KEEPING REQUIREMENTS.

Schedule B.7 of the NPDES permit requires A & K Development to conduct monthly inspections of areas exposed to stormwater and areas where stormwater control measures, structures, catch basins, and treatment facilities are located. A & K Development must inspect for: industrial material that could contact stormwater, leaks or spills, offsite tracking of materials, tracking or blowing of materials, evidence of, or the potential for, pollutants entering the drainage system, evidence of pollutants discharging to waters at all outfalls, the presence of floating solids, foam, oil sheen, discoloration of discharges at all outfalls, and properly functioning stormwater control measures. An inspection report must be prepared and maintained for each monthly inspection that documents the inspection date and time, control measures needing cleaning, replacement, maintenance, reconditioning or repair, the condition of the drainage/conveyance system and need for maintenance, previously unidentified sources of pollutants, stormwater discharge observations and whether discharges contained floating solids, foam, oil sheen, or discoloration, and any corrective actions that will be taken in response to the inspection. Based upon information and belief, A & K Development is in violation of Schedule B.7 of the NPDES permit because, since obtaining permit coverage on January 17, 2013, it has failed to conduct and document each of the requisite monthly inspections in accordance with the requirements described above.

Additionally, Schedule B.10 of the NPDES permit requires A & K Development to record and maintain at the facility a copy of the SWPCP and any revisions, corrective action reports, and monthly inspection reports; inspection, maintenance, repair and education activities; and information concerning spills or leaks of significant materials that impacted or had the potential to impact stormwater or surface waters, including the corrective actions to clean up the spill or leak as well as measures to prevent future problems of the same nature. All records must be retained by A & K Development for at least three years and A & K Development must make the information available to the Oregon Department of Environmental Quality, its agent, or the local municipality upon request. Schedule F.D.7 similarly requires A & K Development to furnish to the department within a reasonable time any information that the department may request to determine compliance with A & K Development's NPDES permit, including copies of records required to be kept by the NPDES permit. A & K Development has violated and is violating these requirements by failing to create and maintain Best Management Practices maintenance records, including street sweeping records and replacement records for catch basin inserts, and by failing to provide those records to the City of Eugene upon request. These violations have occurred each and every day since A & K Development obtained coverage under the NPDES permit on January 17, 2013.

F. VIOLATIONS FOR FAILURE TO MITIGATE.

Schedule F.A.3 of A & K Development's NPDES permit requires A & K Development to take all reasonable steps to minimize or prevent any discharge in violation of A & K Development's NPDES permit. Each of the permit violations alleged in this notice of intent to sue also constitutes a violation of Schedule F.A.3 of A & K Development's NPDES permit. As explained throughout this notice of intent

to sue, A & K Development has failed and is failing "to take all reasonable steps to minimize or prevent any discharge in violation of A & K Development's NPDES permit." These violations have occurred each and every day since A & K Development obtained coverage under the NPDES permit on January 17, 2013.

G. NONCOMPLIANCE REPORTING VIOLATIONS.

Schedule F.D.6 of A & K Development's NPDES permit requires A & K Development to report to the Oregon Department of Environmental Quality or the City of Eugene all instances of noncompliance not reported under General Condition D.4 or D.5 (Schedule F.D.4 of F.D.5) at the time A & K Development submits its monitoring reports. Each noncompliance report must contain a description of the noncompliance and its cause, the period of noncompliance, an estimate of the time noncompliance is expected to continue, and the steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. A & K Development has violating and is violating this permit requirement because it failed to submit to the Oregon Department of Environmental Quality or the City of Eugene sufficient noncompliance reports explaining all the instances of noncompliance described in this notice letter in a timely manner.

II. PARTY GIVING NOTICE.

The full name, address, and telephone number of the party giving notice is:

Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219
(503) 768-6673

III. ATTORNEYS REPRESENTING NEDC.

The attorneys representing NEDC in this matter are:

Paul Kampmeier
Kampmeier & Knutsen, PLLC
615 Second Avenue, Suite 360
Seattle, Washington 98104
Telephone: (206) 223-4088 extension 4

Brian A. Knutsen
Kampmeier & Knutsen PLLC
833 S.E. Main Street
Mail Box No. 318; Suite 327
Portland, Oregon 97214
Telephone: (503) 841-6515

IV. CONCLUSION.

The permit violations described and alleged in this notice of intent to sue are ongoing and violate the Clean Water Act. At the conclusion of the 60-day notice period, NEDC intends to file a lawsuit against A & K Development under the citizen suit provisions of Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day. In addition to civil penalties, NEDC will seek injunctive relief to prevent further violations and such other relief as is permitted by law, including recovery of NEDC's costs, attorneys' fees, and expert witness fees. See 33 U.S.C. §§ 1365(a) and (d). Although the above-described violations reflect the information currently available to NEDC, NEDC intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter.

During the 60-day notice period NEDC will be willing to discuss effective remedies for the violations described in this letter. If you wish to pursue settlement discussions in the absence of litigation, we suggest that you initiate discussions within 10 days of receiving this notice so the parties can meet and discuss effective remedies for the violations alleged herein. NEDC does not intend to delay the filing of a complaint if discussions are ongoing when the notice period ends.

Very truly yours,

Kampmeier & Knutsen, PLLC

By: 
Paul A. Kampmeier
Brian A. Knutsen

cc: Gina McCarthy, Administrator, U.S. Environmental Protection Agency
Dennis McLerran, Region 10 Administrator, U.S. Environmental Protection Agency
Dick Pedersen, Director, Oregon Department of Environmental Quality
Mr. Ronald L. Anderson, Registered Agent for A & K Development Company, 410 Chambers Street, Eugene, Oregon 97402

CERTIFICATE OF SERVICE

I, Paul Kampmeier, declare under penalty of perjury of the laws of the United States that I am counsel for Northwest Environmental Defense Center and that on November 27, 2015, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act to be served on the following by depositing it with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

Managing Agent
A & K Development Company
410 Chambers Street
Eugene, Oregon 97402

Administrator Regina A. McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W., Mail Code 1101A
Washington, D.C. 20460

Regional Administrator Dennis J. McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code RA-210
Seattle, Washington 98101

Director Dick Pedersen
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390

Mr. Ronald L. Anderson
Registered Agent for A & K Development Company
410 Chambers Street
Eugene, Oregon 97402



Paul Kampmeier

